

² Appellant additionally listed OWCP File No. xxxxxx632 on his application for review (AB-1) form; however, the Board notes that there are no decisions in that case within the Board's jurisdiction, as the last decision was issued on April 9, 2013. 20 C.F.R. § 501.3.

FACTUAL HISTORY

On September 10, 2018 appellant, then a 46-year-old city carrier, filed a notice of recurrence of disability (Form CA-2a) claiming that on September 5, 2018 he sustained a recurrence of his September 14, 2004 injury when he was carrying a tray filled with magazines from his employing establishment vehicle to the employing establishment while in the performance of duty. He indicated that he stopped work that day and sought medical treatment on September 6, 2018.³

In an October 23, 2018 development letter, OWCP informed appellant that it was in receipt of his claim for a September 5, 2018 employment injury. Because it appeared that he was performing a work function when the alleged incident occurred, it was converting his recurrence claim to a new traumatic injury claim, assigned OWCP File No. xxxxxx327. OWCP indicated that additional evidence was required in support of appellant's claim. It advised him of the type of medical evidence necessary and afforded him 30 days to submit the requested evidence.

By decision dated November 26, 2018, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed condition causally related to the accepted September 5, 2018 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant filed a claim for compensation (Form CA-7) on August 7, 2019 for leave without pay for the period September 5, 2018 to August 2, 2019.

On August 7, 2019 OWCP also received a work capacity evaluation form (Form OWCP-5c) and an attending physician's report (Form CA-20) that were both completely illegible.

On November 21, 2019 appellant requested reconsideration.

In a November 15, 2019 narrative statement, appellant alleged that on September 5, 2018 he suffered a traumatic injury when he carried a tray of magazines from his employing establishment vehicle to the employing establishment station platform. He related that on that day he went to the emergency room to evaluate his injury and then went to his primary care physician the next day who has continued to treat him. Appellant noted that he was enclosing the most recent medical documentation from his primary care physician; however, no medical evidence was enclosed.

By decision dated December 23, 2019, OWCP denied appellant's request for reconsideration.

³ The notice of recurrence was originally filed under OWCP File No. xxxxxx632, which was a traumatic injury claim (Form CA-1) accepted on June 3, 2005 for displacement of the lumbar intervertebral disc without myopathy sustained on September 14, 2004.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

Appellant filed a timely request for reconsideration on November 21, 2019. He did not demonstrate that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a new and relevant legal argument not previously considered by OWCP. Consequently, the Board finds that appellant was not entitled to a review of the merits based on the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁸

Appellant also failed to submit relevant and pertinent new evidence in support of his November 21, 2019 request for reconsideration. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a

⁴ 5 U.S.C. § 8128(a); *T.T.*, Docket No. 19-0319 (issued October 26, 2020); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁵ 20 C.F.R. § 10.606(b)(3); *see B.R.*, Docket No. 19-0372 (issued February 20, 2020); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁶ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁷ *Id.* at § 10.608(b); *see M.E.*, Docket No. 20-0067 (issued October 15, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *D.B.*, Docket No. 19-1963 (issued July 1, 2020); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

basis for reopening a case.⁹ The underlying issue in this case is whether appellant submitted sufficient medical evidence to establish a diagnosed medical condition causally related to the accepted September 5, 2018 employment incident. OWCP received a claim for compensation (Form CA-7), but this document did not address the underlying issue. Appellant submitted a work capacity evaluation form (Form OWCP-5) and an attending physician's report (Form CA-20) both of which were completely illegible. The Board has previously explained that an illegible document does not constitute probative medical evidence as it does not establish that the author is a physician.¹⁰ Appellant also submitted a November 15, 2019 narrative statement describing the accepted September 5, 2018 employment incident and indicating that he sought medical treatment. As the underlying issue on reconsideration is medical in nature, his personal narrative statement does not establish entitlement to a review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).¹¹

The Board accordingly finds that OWCP properly determined that appellant was not entitled to further review of the merits of his claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹²

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

⁹ *S.H.*, Docket No. 19-1897 (issued April 21, 2020); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

¹⁰ *S.F.*, Docket No. 19-1735 (issued March 12, 2020); *see C.S.*, Docket No. 18-1633 (issued December 30, 2019); *see also K.C.*, Docket No. 18-1330 (issued March 11, 2019).

¹¹ *See G.J.* Docket No. 20-0071 (issued July 1, 2020).

¹² *C.C.*, Docket No. 18-0316 (issued March 14, 2019); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the December 23, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board